



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Notification of Authorised Representatives) Instrument 2022/301*

This is the Explanatory Statement for *ASIC Corporations (Notification of Authorised Representatives) Instrument 2022/301* (the **Instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

#### Summary

1. On 17 December 2020, the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020 (FSRC Reform Act)* received royal assent. Schedule 7 of the FSRC Reform Act established “claims handling and settling service” (**CHSS**) as a financial service. Therefore, requirements in Chapter 7 of the *Corporations Act 2001 (Corporations Act)* are extended to those providing a CHSS.
2. Section 916A of the Corporations Act sets out how an Australian financial service licensee (**AFS licensee**) may authorise a person (**Authorised Representative**) to provide a specified financial service or financial services on behalf of the AFS licensee.
3. Subsection 916B(1) provides that generally an Authorised Representative cannot make a person their Authorised Representative, nor can they make a person an Authorised Representative of the AFS licensee. However, if the Authorised Representative has consent from the AFS licensee, then they are permitted to sub-authorise individuals to provide a financial service (under subsection 916B(3)). Subsection 916B(5) provides that an AFS licensee’s consent may cover a specified class of individuals (the membership of which might change from time to time). This allows an AFS licensee to consent to the sub-authorisation of employees of an Authorised Representative.
4. Some AFS licensees who are authorised to provide a CHSS appoint Authorised Representatives to provide that CHSS. Where the AFS licensee consents, those Authorised Representatives may sub-authorise a significant number of employees to provide the CHSS. Each of those employees is, pursuant to subsection 916B(6), an Authorised Representative of the AFS licensee.
5. Subsection 916F(1) of the Corporations Act, as modified by regulation 7.6.04AA of the *Corporations Regulations 2001*, requires an AFS licensee to

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notify ASIC of the appointment of an Authorised Representative within 30 days of appointment. This aims to ensure that consumers can identify whether persons they may be dealing with are authorised to provide a financial service on behalf of a AFS licensee.

6. Authorised Representatives appointed under section 916B are exempt from this notification requirement in certain circumstances. Authorised Representatives are not required to notify ASIC when sub-authorising their employees to provide general advice in relation to, and to deal in, prescribed financial products (pursuant to subsection 916F(1AA)).
7. The Instrument modifies section 916F of the Corporations Act to extend the exemption from the obligation to notify ASIC of sub-authorised employees. The Instrument includes the provision of a CHSS, in relation to general insurance and consumer credit insurance products, in the list of financial services in paragraph 916F(1AA)(d). The effect is that an Authorised Representative is not required to notify ASIC of the sub-authorisation of an employee to provide a CHSS in relation to the specified insurance products.

### **Purpose of the instrument**

8. The purpose of the Instrument is to exempt Authorised Representatives from the requirement to notify ASIC of the sub-authorisation of employees who provide a CHSS in relation to general or consumer credit insurance products.
9. Some Authorised Representatives sub-authorise a significant number of employees (sometimes hundreds) to provide a CHSS. Subsections 916F(1) and 916F(3) require an Authorised Representative to notify ASIC of any authorisation, change in details or revocation of authorisation for all of its employees.
10. The administrative burden caused by requiring Authorised Representatives to notify ASIC of each of these sub-authorisations and changes in details would be an unintended outcome of the FSRC Reform Act. These notifications would result in limited consumer benefit.
11. The Instrument reduces administrative burden by removing the notification requirement in certain circumstances. This does not alter the substantive obligations that Authorised Representatives and AFS licensees owe to consumers. Consumers with complaints about the provision of a CHSS or the conduct of an Authorised Representative or its employees will have access to the dispute resolution processes of the AFS licensee. Consumers will still be able to use ASIC's registers to verify that a corporate entity is an Authorised Representative of the AFS licensee, but they will not be able to look up individual employees of an Authorised Representative.

### **Consultation**

12. Before making this Instrument, ASIC undertook targeted consultation with a range of stakeholders from industry, Treasury and consumer representative

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bodies. ASIC consulted both on the need for relief and the scope of the proposed relief.

### **Operation of the instrument**

13. Section 2 of the Instrument provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation. Section 6 of the Instrument provides that the instrument will be repealed after a period of 5 years.
14. Section 5 of the Instrument modifies section 916F of the Corporations Act. A new subparagraph 916F(1AA)(d)(iv) is inserted. Subparagraph 916F(1AA)(d)(iv) includes ‘a claims handling and settling service that relates to one or more of the following financial products’ as a financial service to which the exemption applies. The financial products specified under subparagraph 916F(1AA)(d)(iv) are a general insurance product and a consumer credit insurance.

### **Legislative instrument and primary legislation**

15. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument than primary legislation because the instrument provides relief for a relatively small subset of entities in circumstances where strict compliance with the primary legislation produces an unintended result consequential to the FSRC Reform Act.
16. Prior to the sunset of the instrument, ASIC and Treasury will undertake a thorough review of the instrument and ASIC will consult with Treasury on options for amending, remaking or revoking it.
17. A 5-year duration for the Instrument gives ASIC and Treasury time to consider the merits of incorporating the relief into the primary legislation and, if required, make recommendations for the Government to consider amendments to the primary law or regulations.

### **Legislative authority**

18. The Instrument is made under paragraph 926A(2)(c) of the Corporations Act.
19. Paragraph 926A(2)(c) provides that ASIC may declare that certain provisions of Part 7.6 of the Corporations Act apply to a class of person as if specified provisions were omitted, modified or varied.
20. The Instrument is a disallowable legislative instrument.

### **Statement of Compatibility with Human Rights**

21. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

## **Statement of Compatibility with Human Rights**

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### ***ASIC Corporations (Notification of Authorised Representatives) Instrument 2022/301***

#### Overview

1. *ASIC Corporations (Notification of Authorised Representatives) Instrument 2022/301* exempts general insurers that appoint authorised representatives to provide claims handling and settling services from the requirement to notify ASIC of the sub-authorisation of the Authorised Representatives employees. The Instrument is not intended to limit or modify any obligations the AFS licensee or Authorised Representative owe to consumers.

#### Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

3. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.